

Remarks/ Arguments

Claims 30 to 47 are pending in this patent application. The claims are subject to a restriction requirement as indicated below.

Discussion of Election/Restriction Requirement Pursuant to 35 U.S.C. § 121

Applicants' claim 30, for example, defines a mixture for depositing an organosilicate film comprising a dielectric constant of 3.5 or below, the mixture comprising at least one structure-former precursor selected from the group consisting of an organosilane and an organosiloxane and a pore-former precursor, wherein the pore-former precursor is selected from the group consisting of:

- i) a hydrocarbon compound having from 1 to 13 carbon atoms,
- ii) a decomposable polymer,
- iii) a polyoxyalkene, and
- iv) mixtures thereof,

wherein at least one precursor and/or the organosilicate film exhibits an absorbance in the 200 to 400 nm wavelength range (*see, e.g.*, claim 30). Because Applicants' claim 30 recites a plurality of alternatively useable substances or members, it includes a Marhush-type generic recitation, or a "Markush group" (*see* MPEP § 803.02).

The Action alleges that each of the porogen species of the Markush group is a patentably distinct species of the claimed invention (Action at 2). Accordingly, the Action requires Applicants to elect one of the recited species for examination. The Action further requires Applicants to elect a subspecies from within the elected species (*id.*). Applicants respectfully traverse the restriction requirement.

Whether restriction is proper depends upon whether a serious burden exists:

[i]f the search and examination of an entire application can be made without serious burden, the examiner must examine it on

the merits, even though it includes claims to independent or distinct inventions.

(MPEP § 803).

Moreover, the MPEP at § 803.02 states that “[i]f the members of the Markush group are sufficiently few in number ... that a search and examination of the entire claim can be made without serious burden, the examiner must examine all claims on the merits ... the examiner ... will not require restriction (MPEP § 803.02 at 800-4). Significantly, the Action fails to make any showing with respect to its burden. In this regard, Applicants submit respectfully that the Action has provided ***no evidence or reasoning*** to support the election/restriction requirement or to show that the requisite serious burden exists. The Action is ***completely silent*** with respect to any allegation of a serious burden.

Applicants respectfully submit that the examination of the porogen species would not present an undue burden on the Examiner because the members of the Markush group are small in number. Applicants’ claim 30, for example, includes only ***three (3) members*** of the “porogen” Markush group: a hydrocarbon compound having from 1 to 13 carbon atoms, a decomposable polymer, a polyoxyalkene, in addition to “mixtures thereof.” Indeed, search of only the three named members of the porogen Markush group will necessarily result in the search of the “mixtures.” Accordingly, reconsideration and withdrawal of the restriction requirement are respectfully requested.

To be fully responsive to the Action, Applicants elect the ***hydrocarbon*** species and the ***alpha-terpinene*** sub-species.

Applicants reserve the right to pursue the non-elected subject matters in one or more divisional applications prior to issuance of a patent on the instance application.

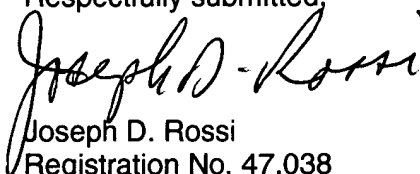
Applicants believe that the foregoing constitutes a complete and full response to the Action of record. Applicants respectfully submit that this application is now in condition for

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allowance. Accordingly, an indication of allowability and an early Notice of Allowance are respectfully requested.

The Commissioner is hereby authorized to charge the fee required and any additional fees that may be needed to Deposit Account No. 01-0493 in the name of Air Products and Chemicals, Inc.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Joseph D. Rossi". The signature is written in a cursive, flowing style with a large initial "J".

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